IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.507 OF 1990

Shri Shevantilal Premchand Shah & Ors .. Appellant

versus

The Nasik Municipal Corporation, Nasik .. Respondents & Ors.

...

Mr. V.Z. Kankaria for appellants.

Mr. V.A. Gangal with Mr Chandrakant Yadav for respondents 1 & 2.

Mr D.R. Mahadik i/b. Mr S.R. Singh for respondent no.3.

CORAM : D.G. KARNIK, J

DATED : 7th November 2006

P.C.:

1. Heard learned counsel for the parties.

2. The appellants who are the heirs of the deceased Vijaykumar Shah have filed this appeal for enhancement of the compensation awarded to them by the Motor Accident Claims Tribunal, Nasik.

3. At about 9 p.m. on 21st April, 1985 Vijaykumar Shah who was driving two wheeler, suffered an accident at the hands of the respondent no.2 who was driving a lorry tanker no. MWN 1117 owned by the respondent no.1. The accident took place in front of the civil hospital on Nasik- Trimbak Road. Vijaykumar (hereinafter referred to as 'the deceased') was declared dead when taken to the hospital. Appellant no.2 is the widow and appellants no.3 to 7 are the minor children of the deceased. Appellant no.1 is the father of the deceased.

4. The appellants filed an application for compensation against the respondents alleging that the respondent no.2 was driving the tanker rashly and negligently and on account of his rash and negligent driving, he caused death of the deceased. The appellants claimed that deceased was a partner in the firm "Bharat Teal Supply Company" and had 25% share in

the partnership. His share in the profits of the partnership was between Rs.14690/- and Rs.19650/- per year in the years 1983-84 to 1985-86. They claimed that deceased was contributing about Rs.1500/- per month to the expenses of the family and therefore they claimed compensation on the basis of loss of income as also for mental shock and agony and damage caused to the scooter.

5. The Motor Accident Claims Tribunal (for short 'the Tribunal') after considering the entire evidence held that the accident was caused due to rash and negligent driving of the respondent no.2. It therefore held that the appellants were entitled to the compensation. The Tribunal held that the deceased was contributing about Rs.14000/- per annum to the family and applying the multiplier of 17 years held that the loss to the family would be Rs.2,38000/-. The Tribunal deducted Rs.38,000/- on account of the lumpsum payment and awarded compensation of Rs.2,00000/-. The Tribunal did not award any compensation under the other heads. Aggrieved by the decision of the Tribunal in not granting the full compensation as claimed, the appellants have filed this appeal.

6. Respondents have not filed cross objections. Before me, the respondents did not challenge the finding of negligence of the respondent no.2 recorded by the Tribunal. In the circumstances, the only question that is required to be considered is what would be the appropriate amount of compensation.

7. Before the Tribunal the appellants produced the assessment orders of the income of the partnership firm. There were four partners in the firm and each partner had one fourth share in the profits. The share of profit of each of the partners for the assessment year 1983-84 was Rs.19650/-. For the year 1984-85 was Rs.14682/-,for the year 1985-86 was Rs.17,245/- and for the year 19986-87 was Rs.18,997/-. The Tribunal has held that the average annual income of each of the partners of the partnership firm was Rs.18000/-. In view of the assessment orders of income produced by the appellant and in the absence of any evidence in rebuttal the finding recorded by the Tribunal that the annual income of the deceased from the partnership was Rs.18000/- per year is accepted. The Tribunal has held that the deceased must be spending Rs.300/- per month on himself and therefore his yearly contribution to the family was Rs.14000/- per annum. It is worthwhile to

note that the deceased has a wife and four children. All of them were minors. Taking this into consideration that there were about six members in the family it would be appropriate to deduct one sixth of the total income as amount spent by the deceased on himself. If one sixth amount is deducted from the yearly income of Rs.18000/-, contribution of the deceased towards the family would be Rs.15000/- per year. The deceased was 39 years of age when was died. He was businessman and would have easily carried out the business till the age of 65 years i.e. about 26 years more from the date of accident. However restricting the amount of multiplier of 18 years on the basis of the law laid down by the Supreme Court in U.P. State Road Transport and others v/s. Trilok Chandra reported in 1996 ACJ 831 the loss to the family would be Rs.15000/- x 18 = Rs.2,70,000/-. No evidence was adduced before the Tribunal regarding damage to the scooter and therefore Tribunal rightly rejected the claim for the damage caused to the scooter. In view of the fact that the compensation is calculated on the basis of the economic loss to the family by applying the test of multiplier, the Tribunal rejected the claim for compensation on account of mental shock and agony to the claimants. I see no reason to interfere in the

said decision of the Tribunal. I also see no reason to interfere in the rate of interest of 12% per annum awarded by the Tribunal taking into consideration rates of interest which were prevailing in late 80’s and early 90’s.

8. Thus appellants would be entitled for compensation of Rs.2,70,000/- as against to the compensation of Rs.2,00,000/- awarded by the Tribunal. In the circumstances, the appeal must be partly succeed and accordingly it is partly allowed. The award passed by the Tribunal is modified and is substituted as follows:-

The respondents shall pay to the appellants a sum of Rs.2,70,000/- with interest thereon at the rate of 12% per annum from the date of the application. The liability of the respondent no.3 is however restricted to Rs.1,50,000/- being the statutory maximum under the Motor Vehicles Act and under the terms of the policy. The respondent no.3 shall however initially pay the entire amount and be entitled to recover the excess payment from the insured. The respondents shall also pay proportionate cost of the appeal to the appellants.

The amount awarded is apportioned as below:-

Claimant/appellant no.1(i.e.father) : Rs.10,000/-
Claimant/appellant no.2(i.e.mother) : Rs.10,000/-
Claimant/appellant no.3 to 7,(i.e. widow and children equally) : Rs.2,50,000/-

The amount falling to the share of the appellant no.3 shall be paid to her forthwith and the amount falling to the share of the children would be paid to each of them on their attaining majority. Till then the amount shall be invested in State Bank of India or any other nationalised bank of the choice of appellant no.3.

(D.G. KARNIK, J)